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Procurement and Brand Ltd. and  
Circle K Stores Inc.*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

CIRCLE K PROCUREMENT AND  
BRANDS LTD. and  
CIRCLE K STORES INC.,

No.

Plaintiff.

**COMPLAINT**

v.

GOLI NUTRITION INC.,

Defendant.

Plaintiffs Circle K Procurement and Brands Ltd. and Circle K Stores Inc. state  
the following Complaint against Defendant Goli Nutrition Inc.:

**PARTIES, JURISDICTION, AND VENUE**

1  
2 1. Plaintiff Circle K Procurement and Brands Limited (“CK Brands”) is an  
3 international company with its headquarters located in Dublin, Ireland.  
4

5 2. Plaintiff Circle K Stores Inc. (“CK Stores”) is a United States chain of  
6 convenience stores with its principal place of business in Tempe, Arizona.

7 3. Defendant Goli Nutrition Inc. (“Goli”) is an international nutrition  
8 company with its headquarters located in Quebec, Canada, that markets and sells daily  
9 supplement products within the United States, including in Arizona.  
10

11 4. This Court has personal jurisdiction over Goli under the Constitution of  
12 the United States because (i) Goli sells its daily supplements to citizens of Arizona at  
13 dozens or hundreds of retail stores in Arizona, including at CK Stores’ retail gas  
14 stations, and the claims underlying this Complaint relate to and arise out of Goli’s  
15 contacts with this State, among others; (ii) Goli consented to jurisdiction in this District  
16 under the Parties’ operable contract; and (iii) Goli has sufficient minimum contacts  
17 with this State such that this Court’s exercise of personal jurisdiction over Goli  
18 comports with traditional due process notions of fair play and substantial justice.  
19  
20

21 5. The Court has subject matter jurisdiction over this matter under 28  
22 U.S.C. § 1332(a)(2); here, the amount in controversy exceeds \$75,000, and this civil  
23 suit is between a citizen of a State and a citizen of a foreign state because CK Stores is  
24 a citizen of Arizona, and Goli is a citizen of Canada.  
25

26 6. Venue is proper in this Court under the operable contract between the  
27 Parties, which consents to venue in this District. Venue is also proper in this Court  
28

1 under 28 U.S.C § 1391(b) because Goli is subject to the Court’s personal jurisdiction  
 2 in this action.

### 3 GENERAL ALLEGATIONS

4  
 5 7. Plaintiffs restate, re-allege, reaffirm, and incorporate all preceding  
 6 paragraphs as if fully contained herein.

7 8. On January 1, 2022, the Parties entered two contracts that give rise to  
 8 Plaintiffs’ claims in this lawsuit.

9  
 10 9. *First*, the Parties entered a U.S. National Supplier and Purchase  
 11 Agreement (the “Master Agreement,” attached as Ex. 1). The term of the Master  
 12 Agreement is from January 1, 2022, through December 31, 2023. (*Id.* at ¶ 6.)<sup>1</sup>

13 10. Under the Master Agreement, CK Brands was representing and acting  
 14 on behalf and for the benefit of certain “Affiliated Companies,” which were defined in  
 15 the Master Agreement to include CK Stores and others, and all of which were  
 16 collectively defined as “Customer” or “Customers” along with CK Brands under the  
 17 Master Agreement. (Ex. 1 at 2 & ¶ 1.5.) Pursuant to Section 1.5 of the Master  
 18 Agreement, CK Stores and many other affiliated Circle K entities are third-party  
 19 beneficiaries of the Master Agreement.  
 20  
 21

22 11. The Master Agreement expressly recognized that the Customers’ United  
 23 States network is comprised primarily of corporate stores under the “Circle K” and  
 24

25  
 26 <sup>1</sup> The Master Agreement is governed and construed in accordance with the laws of the  
 27 State of Arizona, and it provides that the Parties “consent and shall not be permitted to  
 28 object” to venue and jurisdiction in Arizona state and federal courts. (Ex. 1 at ¶ 11.8.)

1 other brand names as well as franchise stores operating under various brands, all of  
2 which are in multiple states of the United States, including Arizona, and are divided  
3 into business units. (*Id.* at 2.)  
4

5 12. The Master Agreement required Goli to sell to the Customers, and  
6 required the Customers to buy, the products listed on Schedule A to the Master  
7 Agreement. (*Id.* at ¶ 1.1; *see also id.* at 16–17 (Schedule A).)  
8

9 13. In turn, in Schedule A of the Master Agreement, Goli guaranteed the  
10 Customers a “minimum velocity” of sales of four Goli products (the “Guaranteed  
11 Obligation”). (*Id.* at 16.) The four Goli products listed on Schedule A are: (1) UPC  
12 #055840401951 (Goli’s Apple Cider Vinegar Supplement), UPC #055840401975  
13 (Goli’s Ashwagandha Supplement), UPC #055840401999 (Goli’s “Superfruits”  
14 Supplement), and UPC #055840402019 (Goli’s “Supergreens” Supplement). (*Id.*)  
15

16 14. More specifically, Schedule A to the Master Agreement states that each  
17 Circle K Business Unit was expected to average \$27.50 per SKU per week within the  
18 “Territory,” which was defined in the Master Agreement to be the United States. (*Id.*;  
19 *see also id.* at 2.)  
20

21 15. Schedule A also states that if the Guaranteed Obligation is not met, Goli  
22 will pay each Circle K business unit “on N30 terms representing fifty-two percent  
23 (52%) of the difference of A) the sum of the Guaranteed Obligations amount per SKU,  
24 for all applicable SKUs and B) the sum of the average per-SKU sale amount for all  
25 SKUs, based on the number of SKUs sold, for a period of thirteen (13) weeks.” (*Id.* at  
26 16.)  
27  
28

1           16. In other words, if the promised minimum velocity was not met under the  
2           Guaranteed Obligation, Goli was contractually required to pay the Customers a 52%  
3           margin on the difference between actual sales and the guaranteed number of sales  
4           according to the formula detailed in Schedule A to the Master Agreement.  
5

6           17. The Master Agreement separately requires Goli to “maintain an  
7           inventory and service level of Products at all times which will meet [the Customers’]  
8           need for Products based on [their] historical purchases and such other forecasts as  
9           [they] may from time to time provide to [Goli].” (*Id.* at ¶ 1.2; *see also id.* at 19  
10          (Schedule C, ¶ b) (“Supplier is required to provide Customer with fresh, in-date  
11          products.”).) Goli’s failure to keep its Customers’ inventory in stock results “in  
12          penalties to be paid by [Goli] including without limitation lost profits (including any  
13          applicable rebates) and business interruption delays and associated costs.” (*Id.* at ¶  
14          1.2.)  
15  
16

17          18. ***Second***, the Parties separately entered a Queue Line and/or Checkout  
18          Counter Placement Agreement (the “Placement Agreement,” attached as Ex. 2.) The  
19          Placement Agreement terminates upon expiration or termination of the Master  
20          Agreement. (*Id.* at ¶ 3.)  
21

22          19. In the Placement Agreement, Goli stated its desire to place their products  
23          for sale in a new product space at Plaintiffs’ convenience stores called “the Queue Line  
24          or Checkout Counter,” and accordingly, Goli agreed to pay “\$12.50 per sku per store  
25          per 6 months” for placement of its products in that area. (*Id.* at ¶ B & 2 (Schedule A).)  
26  
27  
28

1           20.    The Placement Agreement otherwise ratified and reaffirmed the Master  
2 Agreement and stated that all the terms and provisions of the Master Agreement  
3 remained in full force and effect. (*Id.* at ¶ 4.)  
4

5           21.    Following the execution of the Master Agreement, Plaintiffs placed the  
6 products that they bought from Goli, and Goli supplied to Plaintiffs, for sale in their  
7 convenience stores, and Plaintiffs otherwise performed all Customer obligations set  
8 forth in the Master Agreement.  
9

10          22.    However, Goli failed to meet the Guaranteed Obligation in the third  
11 quarter of 2022 (July 13, 2022–September 30, 2022); the fourth quarter of 2022  
12 (October 1, 2022–December 31, 2022); and the first quarter of 2023 (January 1, 2023–  
13 March 31, 2023). Goli also failed to meet the Guaranteed Obligation in the second  
14 quarter of 2023 (April 1, 2023–June 30, 2023), and Circle K will soon be issuing its  
15 invoice to Goli for the amounts owed under the Guaranteed Obligation in the Master  
16 Agreement for Quarter Two of 2023.  
17

18          23.    Moreover, following its failure to meet the Guaranteed Obligation in  
19 three consecutive quarters (which is now really four consecutive quarters when adding  
20 in Quarter Two of 2023), Goli failed to perform its contractual obligation to pay the  
21 Customers a 52% margin on the difference between actual sales and the guaranteed  
22 number of sales according to the formula detailed in Schedule A to the Master  
23 Agreement.  
24  
25

26          24.    Further, following the execution of the Placement Agreement, Goli  
27 failed to make the required payments of \$12.50 per SKU per store every six months,  
28

1 despite Plaintiffs placing Goli's products in the Queue Line or Checkout Counter area  
2 of their convenience stores as they were required to do under the Placement  
3 Agreement.  
4

5 25. Plaintiffs sent invoices to Goli for the amounts due and owing on January  
6 3, 2023, January 20, 2023, and April 27, 2023, but Goli has not provided any payment,  
7 which is a violation of the Parties' contracts.  
8

9 26. On March 9, 2023, Plaintiffs, through counsel, sent Goli a written notice  
10 that it was in default of the Master Agreement because Goli had failed to perform its  
11 material obligation—that is, the Guaranteed Obligation—under the Master Agreement  
12 and requesting that Goli cure its default within 30 calendar days. (*See* Ex. 1 at ¶ 7(a)  
13 (“For purposes of this Agreement, a Party is in ‘Default’ if such Party . . . fails to  
14 perform any material obligation under this Agreement . . . In the event a Default  
15 specified in (a) above has occurred, the non-defaulting Party shall send the defaulting  
16 Party a written notice identifying the Default and requesting that such Default be cured  
17 within thirty (30) calendar days.”).)  
18  
19

20 27. Plaintiffs' March 9, 2023, written notice also informed Goli of its breach  
21 of the Placement Agreement for failing to make the required payments of \$12.50 per  
22 SKU per store every six months.  
23

24 28. Plaintiffs' March 9, 2023, written notice asked Goli to provide  
25 reasonable assurances within 30 calendar days that it intended to perform, and was  
26 financially capable of performing, its material Guaranteed Obligation for the remainder  
27 of the term of the Master Agreement, until December 31, 2023. (*See* Ex. 1 at ¶ 7(b)  
28

1 (“For purposes of this Agreement, a Party is in ‘Default’ if such Party . . . fails to  
2 provide reasonable assurances of solvency upon written request by the other Party.”).)

3  
4 29. Since Plaintiffs’ March 9, 2023, written notice, Goli has not cured its  
5 default of the Master Agreement or the Placement Agreement. (*Id.* at ¶ 7 (defining  
6 “cure” as meaning “complete corrective action and the payment of all undisputed fees,  
7 expenses and costs incurred by the non-defaulting Party as a result of the other Party’s  
8 default”).)

9  
10 30. Thus, Plaintiffs are entitled to all rights and remedies available under the  
11 Master Agreement or at law or in equity. (*See id.*; *see also id.* at ¶ 11.6 (“In the event  
12 that a suit is brought or any attorney is retained to enforce any term of this Agreement  
13 or to collect any money due or monetary damages or equitable relief for breach, the  
14 prevailing Party is entitled to recover, in addition to all other available remedies,  
15 reimbursement for such reasonable attorney[s]’ fees, court costs, costs of investigation  
16 and all other related expenses.”).)

17  
18 31. For Goli’s breach of its obligations under the Master Agreement, it owes  
19 Plaintiffs approximately \$8.6 million so far, and for Goli’s breach of the Placement  
20 Agreement, it owes Plaintiffs approximately \$573,000 so far. The total precise  
21 damages amount owed by Goli to Plaintiffs through the first quarter of 2023 is  
22 \$9,172,554.48, plus interest, attorney fees, costs, and other recoverable damages.  
23  
24 These damages will increase substantially once Circle K invoices Goli for the amounts  
25 owed to Circle K for the second quarter of 2023.  
26  
27  
28



1           32. Moreover, Because Goli has failed to provide reasonable assurances to  
2 Plaintiffs that it intends to comply with its contractual obligations under the Master  
3 Agreement or the Placement Agreement, Plaintiffs expect that it will incur millions  
4 more in damages before the December 31, 2023, termination of the two operable  
5 Agreements.  
6

7           33. Additionally, as of June 6, 2023, Plaintiffs calculated that \$53,070.76  
8 worth of Goli products that were for sale in Plaintiffs' retail stores have expired and  
9 thus, cannot be sold. As of the same date, June 6, 2023, Plaintiffs calculated that an  
10 additional \$1,121,019.00 worth of Goli products would not be able to be sold in  
11 Plaintiffs' retail stores due to the products' June 2023 expiration date.  
12

13           34. Goli has informed Plaintiffs that it will not replenish the inventory at  
14 Plaintiffs' retail stores with the proprietary products contemplated by Paragraph 1.2  
15 and Schedule C of the Master Agreement, and thus, Goli has breached its requirement  
16 under the Master Agreement to always maintain a fresh, in-date inventory of products  
17 that meet Plaintiffs' needs. Under Paragraph 1.2, Plaintiffs are entitled to damages of  
18 over a million dollars for Goli's failure to keep Plaintiffs' inventory in stock with non-  
19 expired or non-expiring products.  
20  
21

22                           **FIRST CLAIM FOR RELIEF**  
23                           **Breach of Contract—The Master Agreement**

24           35. Plaintiffs restate, re-allege, reaffirm, and incorporate all preceding  
25 paragraphs as if fully contained herein.  
26  
27  
28

1           36. The Master Agreement is a valid contract between Plaintiffs and Goli  
2 that has existed since it was executed as of January 1, 2022, and the term of the Master  
3 Agreement is until December 31, 2023.  
4

5           37. Goli breached the Master Agreement when, following its failure to meet  
6 the Guaranteed Obligation in the third quarter of 2022, the fourth quarter of 2022, and  
7 the first quarter of 2023, Goli failed to perform its contractual obligation to pay the  
8 Customers a 52% margin on the difference between actual sales and the guaranteed  
9 number of sales according to the formula detailed in Schedule A to the Master  
10 Agreement. For the same reasons, Goli also breached the Master Agreement following  
11 its failure to meet the Guaranteed Obligation in the second quarter of 2023.  
12

13           38. Goli also breached the Master Agreement by failing to maintain at all  
14 times an inventory of products that meet Plaintiffs' needs, and more specifically by  
15 failing to replenish the inventory at Plaintiffs' retail stores with the fresh, in-date  
16 proprietary products contemplated by the Master Agreement.  
17

18           39. As a result of Goli's breach of the Guaranteed Obligation under the  
19 Master Agreement, Plaintiffs have been damaged so far in the amount of  
20 approximately \$8.6 million, plus Plaintiffs' second quarter 2023 damages, with the  
21 total damages amount to be specifically proven at trial.  
22

23           40. As a result of Goli's breach of its obligation under the Master Agreement  
24 to maintain an inventory of non-expired or non-expiring products that meet Plaintiffs'  
25 needs, Plaintiffs have been separately damaged so far in the amount of approximately  
26  
27  
28

1 \$1.17 million due to expired product, and such damages amounts will be specifically  
2 proven at trial.

3  
4 **SECOND CLAIM FOR RELIEF**  
**Breach of Contract—The Placement Agreement**

5 41. Plaintiffs restate, re-allege, reaffirm, and incorporate all preceding  
6 paragraphs as if fully contained herein.

7  
8 42. The Placement Agreement is a valid contract between Plaintiffs and Goli  
9 that has existed since it was executed as of January 1, 2022.

10 43. Goli breached the Placement Agreement by failing to make the required  
11 payments of \$12.50 per SKU per store every six months, despite Plaintiffs placing  
12 Goli's products in the Queue Line or Checkout Counter area of their convenience  
13 stores as required by the Placement Agreement.

14  
15 44. As a result of Goli's breach of its obligations under the Placement  
16 Agreement, Plaintiffs have been damaged so far in the amount of approximately  
17 \$573,000, to be specifically proven at trial.

18  
19 **PRAYER FOR RELIEF**

20 Plaintiffs request that judgment be entered in their favor and against Goli as  
21 follows:

22  
23 A. Compensatory damages caused and that continue to be caused by Goli's  
24 breaches of contract described in this Complaint, in an amount to be proven at trial;

25 B. Legal interest, including pre- and post-judgment interest at the prevailing  
26 rate under Arizona law;  
27  
28

1 C. Reasonable attorney fees, court costs, costs of investigation, and all other  
2 related expenses, as provided by Paragraph 11.6 of the Master Agreement; and  
3

4 D. Such other relief to the extent permitted by law, and as the Court deems  
5 necessary and proper.  
6

7 Dated: July 18, 2023

Respectfully submitted,

8 **DOWD BENNETT LLP**

9 /s/ Matthew E. Johnson

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